

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FABIAN HERNANDEZ,	§	
	§	
Petitioner,	§	
	§	
v.	§	CAUSE NO. 3:15-cv-00051
	§	
BOBBY LUMPKIN, Director, Texas	§	
Department of Criminal Justice, Cor-	§	
rectional Institutions Division,	§	CAPITAL HABEAS CASE
	§	
Respondent.	§	

MOTION TO SUBSTITUTE COUNSEL

TO THE HONORABLE KATHLEEN CARDONE:

COMES NOW Petitioner Fabian Hernandez, by and through his undersigned counsel, and pursuant to 18 U.S.C. § 3599(e), moves the Court to permit Carl David Medders to withdraw as counsel for Mr. Hernandez and appoint the Federal Public Defender for the Western District of Texas, Capital Habeas Unit, in his place. This Motion is based on the files and records in this case and the following points and authorities.

Mr. Hernandez initiated this challenge to the death sentence imposed on him by the State of Texas. Section 3599(a)(2) of Title 18 provides that death-sentenced habeas petitioners are “entitled to the appointment of one or more attorneys and the furnishing of such other services” as may be necessary to their case.

On March 25, 2015, this Court appointed Mr. Medders and William Harris to represent Mr. Hernandez. Order, ECF No. 7. Messrs. Medders and Harris

represented Mr. Hernandez throughout his habeas corpus proceedings that concluded in 2019.

The terms of § 3599(e) require that Messrs. Medders and Harris continue representing Mr. Hernandez unless either or both of them is replaced by similarly qualified counsel. The Capital Habeas Unit (“CHU”) in the Western District of Texas is able to provide qualified counsel in place of Mr. Medders. The CHU is staffed by experienced capital habeas attorneys, investigators and mitigation specialists, and paralegals. As an independently funded office, the CHU can provide investigative and expert assistance to Mr. Hernandez’s case without burdening this Court or the Fifth Circuit. CHU staff have extensive experience representing clients like Mr. Hernandez who have been through the courts and may seek clemency or habeas relief through a successive application.

Mr. Medders has an extremely heavy trial load in a practice that is exclusively in federal court. In the next five months, he is scheduled to try two complicated federal criminal cases, and several other contested matters. Since his appointment eight years ago, Mr. Medders professional focus has been on federal trial litigation. This is the only post conviction proceeding he is still counsel on. Due to the current demands of his schedule, Mr. Medders has not accepted any further federal death penalty habeas appointments and does not plan to do so in the immediate future.

CERTIFICATE OF CONFERENCE

On June 14 and 15, 2023, undersigned counsel for Petitioner emailed counsel for Respondent, Assistant Attorney General Jennifer Wren Morris, and requested an

opportunity to confer about this Motion or state Respondent's position. Undersigned counsel emailed the Assistant Attorney General using two different email addresses. Counsel checked with the Texas Bar to confirm that she still works in the Attorney General's Office. As of this date of filing, Respondent's counsel did not respond to the undersigned's efforts to conference this motion. Undersigned counsel will update this certificate if and when circumstances change.

FOR THESE REASONS, Mr. Hernandez respectfully requests this Court enter the attached proposed order substituting the Federal Public Defender and her Capital Habeas Unit for appointed counsel David Medders.

DATED: June 20, 2023.

Respectfully submitted,

MAUREEN FRANCO
FEDERAL PUBLIC DEFENDER

/s/ Tivon Schardl
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June 2023, I electronically filed the foregoing Petitioner's Motion to Substitute Counsel and Proposed Order with the Clerk of Court using the CM/ECF system which will serve the same on all counsel of record.

/s/ Tivon Schardl
TIVON SCHARDL

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	§	
Respondent.	§	

O R D E R

On this date came on to be considered Petitioner's Motion to Substitute Counsel. The Court, after considering same, is of the opinion that it is in the interests of justice to relieve David Medders from his appointment in this case and to appoint the Federal Public Defender and her Capital Habeas Unit in his place. That is, this Court finds the motion should be GRANTED. Accordingly, it is

ORDERED that attorney David Medders is permitted to withdraw from this case and the Federal Public Defender and her Capital Habeas Unit are substituted in his place.

Signed this _____ day of June 2023.

Hon. Kathleen Cardone, U.S. District Judge